

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

To: The Commission

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JUL 29 2002

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Qwest's Reply Comments as filed are 136 pages long. The captioned application seeks in-region, interLATA authority in five states; moreover, Qwest is responding in its Reply Comments to voluminous comments filed by 14 parties, each of the five State Authorities and the U.S. Department of Justice. Qwest notes that, in addition, its Reply Comments contain information provided at the direction of FCC staff in response to inquiries propounded by staff in the course of the *ex parte* process to date.

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Washington, DC 20554**

In the Matter of)

**Qwest Communications
International Inc.**)

WC Docket No. 02-148

Consolidated Application for Authority)
to Provide In-Region, InterLATA Services in)
Colorado, Idaho, Iowa, Nebraska)
and North Dakota)

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**REPLY COMMENTS OF
QWEST COMMUNICATIONS INTERNATIONAL INC.
IN SUPPORT OF CONSOLIDATED APPLICATION
FOR AUTHORITY TO PROVIDE IN-REGION, INTERLATA SERVICES IN
COLORADO, IDAHO, IOWA, NEBRASKA AND NORTH DAKOTA**

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July 29, 2002

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Pursuant to the Commission's *Public Notice*, DA 02-1390 (June 13, 2002), Qwest Communications International Inc. hereby submits its Reply Comments in the captioned proceeding.

I. INTRODUCTION AND SUMMARY: GRANT OF QWEST'S APPLICATION IS SUPPORTED BY THE RECORD AND COMMISSION PRECEDENT

Qwest's Application provides compelling evidence that Qwest has satisfied the requirements of Section 271 in Colorado, Idaho, Iowa, Nebraska and North Dakota. Each of the the five State Authorities agrees, and, in its respective consultative report filed in this docket, supports grant of the Application.

Comments filed in opposition to Qwest's interLATA reentry are few; more importantly, as shown below, they fail to establish any basis under the Act or Commission precedent for denial of Qwest's Application. Stripped of their rhetoric, comments such as those

of AT&T, WorldCom and Covad are little more than a half-hearted – if full-throated – rehash of arguments fully considered, and rejected, by the State Authorities in the course of their comprehensive Section 271 proceedings. Others, such as those of Touch America, Sprint and the Payphone Providers, attempt to bootstrap Commission consideration of issues that are beyond the ambit of Section 271 or already are the subject of Commission consideration in other, appropriate proceedings. Still other commenters, such as Vanion, Eschelon and OneEighty, offer up anecdotal evidence that both on its face and when viewed in the light of Commission precedent does not warrant a finding of noncompliance with any element of the Section 271 analysis.

A. Each of the State Authorities has Concluded that Qwest has Satisfied the Requirements of Section 271 and Each has Reaffirmed its Support for Qwest's Application

After years of rigorous factfinding and analysis that the CPUC called “the epitome of collaborative, open decision making,” CPUC Evaluation at 9, each of the State Authorities has determined that Qwest has satisfied the requirements of Section 271. Each has concluded that the local market in, respectively, Colorado, Idaho, Iowa, Nebraska and North Dakota is “fully and irreversibly open to competition.” Each has reaffirmed its support of Qwest's Application and urged this Commission to authorize Qwest to provide interLATA services in its state. The State Authorities found, for example, that:

- Qwest's SGAT is “the most thorough . . . in the country.” CPUC Evaluation at 2.
- Qwest's OSS test was “the most rigorous and comprehensive test conducted to date of a Bell Operating Company (BOC).” *Id.* at 2. *See also* IPUC Consultation at 5-6 (active participation of IPUC staff in all

aspects of the regional third party test of Qwest's OSS "ensured that the testing addressed Idaho specific conditions and concerns"). 1/

- A "long and arduous" data reconciliation process has "resulted in all interested observers being assured that Qwest's performance reporting is accurate and reliable." IUB Consultation and Evaluation at 17. *See also* NDPSC First Comments at 11 ("Qwest's audited and reconciled performance results demonstrate that the NDPSC can rely on Qwest's performance data to evaluate whether Qwest satisfies Section 271 of the Act.").
- "CLECs have had - and shall continue to have - substantial opportunities for meaningful input into the design and operation of Qwest's change management process." NPSC Comments at 6.
- Qwest has implemented "the most potent and meaningful performance assurance plan (PAP) yet required of a BOC." CPUC Evaluation at 3.

Meanwhile, the Department of Justice - subject, of course, to this Commission's independent evaluation - also "recommends that the FCC approve Qwest's Application." DOJ Evaluation at 33.

Individually and collectively, these endorsements by the expert agencies whose views are to be accorded "substantial weight" in the Section 271 calculus 2/ constitute additional compelling evidence that Qwest has satisfied the requirements of the Act and that its Application should be granted.

1/ *See also* DOJ Evaluation at 7 ("No CLEC has alleged that the regional approach was inappropriate, or that the underlying OSS are too dissimilar to permit such an overall evaluation.").

2/ *See* 47 U.S.C. § 271(d)(2)(A) (directing Commission to "give substantial weight to the Attorney General's evaluation"); *New York 271 Order*, 15 FCC Rcd ¶¶ 6-13, 20 (Commission will accord "substantial weight" to state evaluations that are based on rigorous underlying proceedings).

B. The Totality of the Evidence and Section 271 Precedent Mandate Grant of Qwest's Application

The State Authorities and the Justice Department have concluded that Qwest's Application should be granted on the basis of a comprehensive record that, significantly, reflects "prodigious and diffuse pleading to the contrary." CPUC Evaluation at 4. Nevertheless, undeterred by the weight of the evidence and the State Authorities' unanimous conclusions, certain commenters have redoubled their efforts to discredit Qwest's satisfaction of the requirements of Section 271 by either misstating the law, mischaracterizing the record, or both.

Foremost among them is AT&T, whose allegations all too often are based on a highly selective use of – or complete disregard for – the record evidence. ^{3/} A few examples will suffice:

- AT&T does not - and cannot - rely on orders issued by the State Authorities in support of its opposition to Qwest's Application, citing instead the preliminary recommendations of an administrative law judge in Minnesota - a state not included in this Application - which in any case have not been adopted by the Minnesota Commission.

The fact is that each of the State Authorities, in multiple, iterative decisions, has concluded that Qwest has satisfied all the requirements of Section 271. ^{4/}

- AT&T contends, citing Qwest's white pages listings data, that "CLECs have managed to gain just 41 UNE-based [*sic*] residential lines" in Idaho and "just 115 such lines" in North Dakota." AT&T Comments at n. 437.

^{3/} "The stridency of AT&T's arguments and the vehemence and promiscuity of its adverbs" have been noted by at least one of the State Authorities in the course of the proceedings below, as has its propensity to conflate its private business interest with the public interest. *CPUC Hearing Commissioner Order Denying Motion To Modify Order on Staff Volume VII Report* at 6, 15.

^{4/} *See id.* at 5 (denying AT&T's request that a Hearing Commissioner order be modified by incorporation of the Minnesota ALJ's recommendations); *see also* IPUC Consultation at 6-11 (restating, and in each case rejecting, AT&T's allegations regarding the adequacy of the third party test of Qwest's OSS).

The fact is that Qwest never suggested that the figures discussed in its Application constituted the entire universe of residential UNE-P. To the contrary, Qwest made clear that figures derived from white pages listings represented only a fraction of UNE-P lines. 5/

- AT&T claims that Qwest impermissibly seeks to expand the scope of the Commission's switching "carve-out" by counting lines on a per-customer basis instead of a per-location basis. AT&T Comments at 95-98.

The fact is that, notwithstanding how lines are counted for purposes of the switching carve-out, Qwest's current policy is to provide access to unbundled switching at UNE rates in all cases, even where it is not obligated to do so under FCC rules. Qwest's Application made this clear. See Simpson/Stewart Switching Decl. ¶ 19 n.27.

- AT&T complains that Qwest's Compliance Oversight Team is a "discriminatory" means by which QCC can secure new products, services or information from QC that are not available to other interexchange carriers. AT&T Comments at 114.

The fact is that the Compliance Oversight Team demonstrably constitutes an additional layer of insulation between QC and QCC by ensuring that all goods, services, facilities and information provided by QC to QCC are reduced to writing, disclosed and made available to unaffiliated entities, and priced according to the requirements of Section 272(b)(5). Qwest Br. at 171; Schwartz Decl. ¶¶ 78-79, 81-83.

As discussed in detail below, other commenters show a similar lack of restraint in their use – or misuse – of the record. But the law is clear: "When considering commenters' filings in opposition to the BOC's application," the Commission looks "for evidence that the BOC's policies, procedures, or capabilities preclude it from satisfying the requirements of the checklist item. Mere unsupported evidence in opposition will not suffice." *Texas 271 Order*, 15 FCC Rcd at 18375 ¶ 50 (emphasis added).

5/ See Teitzel Decl. at 24 ("CLEC white pages listings totals understate the actual number of CLEC access lines in service" precisely because "many access lines are not listed in the white pages").

Furthermore, as the Commission has stated on more than one occasion, the determination of a BOC's satisfaction of the requirements of Section 271 ultimately is "a judgment we must make based on our expertise in promoting competition in local markets and in telecommunications regulation generally." *Kansas/Oklahoma 271 Order* ¶ 29; *see also Texas 271 Order*, 15 FCC Rcd at 18374 ¶ 46; *New York 271 Order*, 15 FCC Rcd at 3972 ¶ 46. The Commission expressly has eschewed the delineation of "specific objective criteria" for satisfaction of Section 271; to the contrary, because the Commission has concluded that it can meaningfully evaluate a Section 271 application only on the basis of "an analysis of specific facts and circumstances," it examines "each application on a case-by-case basis and consider[s] the totality of the circumstances, including the origin and quality of the information before us, to determine whether the nondiscrimination requirements of the Act are met." *Kansas/Oklahoma 271 Order* ¶ 29.

The comprehensive record here reflects several years, hundreds of millions of dollars, and the work of thousands of people to open the Qwest local markets. That record has been endorsed by the State Authorities and deemed sufficient by the Department of Justice. The Commission now should take the final step, and grant Qwest's Application.

II. THE RECORD DEMONSTRATES THAT LOCAL COMPETITION IS FLOURISHING IN EACH OF THE APPLICATION STATES

The Commission has made clear that Track A is satisfied so long as a BOC can show in each state that at least one predominantly facilities-based CLEC is "an actual commercial alternative" to the BOC – which can be done by demonstrating that the CLEC serves "more than a *de minimis* number" of subscribers. 6/

6/ See *New Jersey 271 Order* at ¶ 10; *Kansas/Oklahoma 271 Order*, 16 FCC Rcd at 6257 ¶ 42; *Michigan 271 Order*, 12 FCC Rcd at 20585 ¶ 78. In New Jersey, a CLEC serving no more

Qwest has demonstrated that CLECs are providing service predominantly over their own facilities to more than a *de minimis* number of both residential and business customers in each of the application states, and that the Track A requirements therefore have been satisfied. ^{7/} See Qwest Br. at 14-20; *see also* Teitzel Declaration at 9-29. Even in Idaho, where CLEC market share for residential services is lower than in the other four application states, at least three predominantly facilities-based carriers – Project Mutual Telephone Company, McLeodUSA and CTC Telecom ^{8/} – are actual commercial alternatives to Qwest, providing service to residential end users at more than *de minimis* levels. ^{9/} See Exhibit DLT-Track A/PI-ID-1.

than 733 residential access lines was deemed to satisfy the *de minimis* standard. See *New Jersey 271 Order* ¶¶ 11–13, n.33 & n.41. A CLEC serving no more than 345 residential lines satisfied the standard in Vermont. See *Vermont 271 Order* ¶¶ 11–12; *see also DOJ Vermont Evaluation* at 5 & n.19.

^{7/} Access line and E-911 information associated with Independent LECs serving customers outside Qwest's service territory has been excluded from Qwest's data. Data associated with CLECs serving customers in Independent LEC service territory also were excluded. See *generally* Qwest July 9 Ex Parte.

^{8/} Project Mutual Telephone Company serves both residential and business customers in Burley, Idaho, exclusively *via* its own facilities. McLeodUSA is a predominantly facilities-based CLEC serving residential and business customers in various communities in Idaho *via* a combination of its own facilities, stand-alone UNE loops, UNE-Platform and resale. CTC Telecom, Inc., is a facilities-based CLEC subsidiary of Cambridge Telephone, an Independent LEC, serving a primarily residential subdivision in Eagle, Idaho. This community is in the greater Boise area and is within Qwest's Idaho service territory. See *generally* Qwest July 9 Ex Parte.

^{9/} No commenter has questioned that there is ample competition for business customers. Although, as discussed above, some commenters have alleged that Qwest has failed adequately to open the market to competition for residential services, CLECs serving business customers use precisely the same systems, processes and wholesale rates as those offered to CLECs serving residential customers. These commenters would have the Commission believe that Qwest has fully opened the market to competition for its profitable business customers but, at the same time, has kept the less profitable residential market closed. Of course, this simply is not the case - nor is it possible.

Despite the claims of some commenters that CLEC market shares in the application states are inadequate to support approval under Section 271 (Sprint Comments at 10; AT&T Comments at 133-137; Integra Comments at 7-8), the Commission repeatedly has “specifically declined to require any particular level of market penetration.” ^{10/} Moreover, the percentage of lines served by CLECs in each of the application states is consistent with the penetration rates in other states in which the Commission has granted Section 271 approval. ^{11/} See Qwest Br. at 176-77; Teitzel Declaration at 35-37.

Sprint, meanwhile, contends that “Qwest’s methodology [for estimating CLEC market share] improperly inflates the CLECs’ line estimates by including CLECs’ high speed data lines and local lines which are not used for competitive local service” Sprint Comments at 11. Sprint asserts that it “does not compete with Qwest for local voice telephone service” and “suspects” that the data Qwest attributes to Sprint-affiliated entities are “primarily” used for Dial IP service and “some” DSL. *Id.* at 12. ^{12/} Sprint’s “suspicions” are beside the

^{10/} See, e.g., *New Jersey 271 Order* ¶¶ 10, 13; *Ameritech Michigan Order*, 12 FCC Rcd at 20585 ¶ 77. The Court of Appeals for the D.C. Circuit has affirmed that the Act “imposes no volume requirements for satisfaction of Track A.” *Sprint v. FCC*, 274 F.3d at 553-54; see also *SBC Communications Inc. v. FCC*, 138 F.3d at 416 (“Track A does not indicate just how much competition a provider must offer in either the business or residential markets before it is deemed a ‘competing’ provider.”).

^{11/} AT&T’s comparison (AT&T Comments at 136) of the *absolute* numbers of CLEC lines in North Dakota and Idaho to the *absolute* numbers in New York, Pennsylvania, and Massachusetts is specious. AT&T’s three comparison states have between ten and thirty times the population of North Dakota, and between five and fifteen times the population of Idaho. See United States Census Bureau, Ranking Tables for States: Population in 2000 and Population Change from 1990 to 2000 (PHC-T-2). That North Dakota and Idaho have smaller absolute numbers of CLEC lines than the significantly more populous comparison states is hardly surprising.

^{12/} Notwithstanding Sprint’s description of its activities, Qwest notes that Sprint has *self-reported* residential and business access lines to the Colorado E-911 and white page listings databases. See Teitzel Declaration, Exhibit DLT-Track A/PI-CO-1.

point. Regardless of how Sprint's customers use their access lines - that is, whether they connect a telephone to them and use them for voice, or connect a modem and use them for IP dial-up service - Sprint and Qwest are directly competing to provide the same product: a two-way, voice-grade retail access line. How Sprint packages that line does not change what it is, or the fact that it is a competitive substitute for a Qwest two-way voice-grade retail access line. The Commission's Section 271 orders have never suggested that an applicant must adjust its CLEC retail access line data to reflect the type of traffic the end user may be sending over (or the type of equipment that may be connected to) the line at any given moment, especially since the same access line can be used for both voice and data at different times during the same day.

Sprint also asserts that Qwest is "double counting" access lines by reporting access line estimates based on interconnection trunks and resold lines. Sprint Comments at 12-13. But, because interconnection trunks are used by CLECs only in conjunction with stand-alone unbundled loops and CLEC-owned lines served *via* a CLEC's switch, in order to estimate the total number of CLEC access lines it is necessary to look separately to the number of resale lines served by CLECs - as well as the number of UNE-P lines in service - that remain resident in a Qwest switch. *See* Teitzel Declaration ¶ 39. There is no "double counting" because interconnection trunks are not used to provide resale (or UNE-P) service.

The Track A requirements have been satisfied in Colorado, Idaho, Iowa, Nebraska and North Dakota because, in each state, CLECs are providing service predominantly over their own facilities to more than a *de minimis* number of both residential and business customers. No commenter has offered any evidence to refute this conclusion.

III. QWEST'S PERFORMANCE MEASURES AND DATA ARE ACCURATE AND RELIABLE

A. Independent Reviews Verified That Qwest's Performance Data Is Accurate and Reliable

Over the last two years, Qwest's performance has been scrutinized beyond that experienced by any other BOC. Liberty Consulting and CapGemini audited Qwest's performance tracking and reporting processes and found them reliable, and Liberty and KPMG validated Qwest's performance results in data reconciliation. The facts support their conclusions. Nonetheless, AT&T and Covad contend that Qwest's performance data is unreliable. *See* AT&T Comments at 46-48; Covad Comments at 42-45. In prior Section 271 orders, the Commission rejected similar attacks on the reliability of performance data.

In the *Georgia/Louisiana* proceeding, commenters raised many of the same points raised here. Specifically, the commenters asserted that:

A number of metrics were not calculated properly; the metric data is not an accurate representation of BellSouth's performance; BellSouth's metric data is not provided in a manner that allows competing carriers to readily verify whether BellSouth's performance is meeting established standards; . . . and the lack of a completed audit, and the problems found by KPMG in its Georgia and Florida audits of BellSouth's metric data, demonstrate that the data is unreliable.

Georgia/Louisiana 271 Order at ¶ 17 (citations omitted). The Department of Justice also expressed concerns about "the reliability and accuracy of BellSouth's data." *Id.*

The Commission disagreed. "In view of the extensive third-party auditing, the internal and external data controls, the open and collaborative nature of metric workshops . . . , the availability of raw performance data, BellSouth's readiness to engage in data reconciliations, and the oversight of the [state] Commissions, we are persuaded that, as a general matter

BellSouth's performance metric data is accurate, reliable, and useful." *Id.* at ¶ 19. The same reasoning applies here. Indeed, Qwest's case is even stronger.

None of the BellSouth audits were complete at the time the Commission issued its ruling, and certain exceptions were unresolved." *Id.* at ¶ 16. In contrast, both of Qwest's performance measure audits are complete, and there are no open issues. BellSouth expressed a willingness to undergo data reconciliation. Qwest, on the other hand, participated in a thorough data reconciliation process, and Liberty Consulting closed every exception and observation report that it issued. The Department of Justice did not express any concerns about the accuracy of Qwest's performance data in its comments.

For these reasons, the Commission should reject the allegation that Qwest's performance results are not reliable. Qwest's commercial data is "sufficiently reliable for purposes of conducting [a] section 271 analysis." *Id.* ¶ 20.

1. The Performance Measurement Audits Validated Qwest's Data Collection Processes for all PIDs

AT&T's only criticism of the Performance Measurement Audits ("PMAs") is that they did not validate the accuracy of Qwest's raw data. The simple answer is that Liberty addressed the accuracy of raw inputs in data reconciliation, which is discussed below.

Moreover, in prior Section 271 decisions the Commission has not required auditing of raw data inputs. In the *New York* and *Texas* Section 271 orders, the Commission relied on evidence like the audits in this proceeding and found that commercial performance data was accurate and reliable. In the *New York* decision, the Commission noted that each performance metric had a clearly articulated definition, which set forth the manner in which the data was collected, and would "help to ensure that the reporting mechanism provides a benchmark against which new entrants and regulators can measure performance over time to

detect and correct any degradation of service rendered to new entrants.” *New York 271 Order* ¶ 438. The New York commission, like the auditors in this case, “independently replicated Bell Atlantic’s performance reports from raw data submitted by Bell Atlantic.” *Id.* ¶ 442. The FCC found that these facts, and a “forum for ongoing modification and improvement of performance results,” provided the requisite indicia of reliability. *Id.* at ¶ 438.

The *Texas* order was based on virtually identical evidence. The Commission required only that “the raw data be stored in a secure, stable and auditable file.” SBC also relied upon the fact that Telcordia had “verified” its “data collection methods and procedures” and “confirmed that SBC collects and reports data in a manner consistent with state approved business rules.” *Id.* ¶ 429.

The Liberty and CapGemini PMAs meet those standards. They validated that Qwest tracks performance data in conformance with the negotiated PIDs, analyzed data to “verify the complete and accurate functioning of the data capture, security, processing, analysis, and reporting processes audited,” and performed independent calculations to “corroborate the adequacy of processes that measure performance against explicit standards.” *See* Attachment 5, Appendix D, Liberty PMA Final Report at 1 (September 25, 2001).

The Liberty PMA also recommended ongoing review and audit of the PIDs to ensure that Qwest’s performance data remains accurate and reliable. *Id.* at 135-144. That led to the development of provisions in Qwest’s performance assurance plans requiring six-month reviews of performance and ongoing audits and data reconciliation. In addition, the parties are negotiating a long term PID administration plan to be administered by the ROC. These independent reviews provide guarantee that Qwest’s performance data is, and will remain, reliable.

2. Data Reconciliation Confirmed Once And For All That Qwest's Performance Data Is Accurate and Reliable.

Unlike other BOCs, Qwest requested data reconciliation to validate that its raw data inputs and performance reporting processes are accurate and reliable. Nonetheless, AT&T and Covad complain that the reconciliation did not go far enough.

AT&T's first complaint, that the data reconciliation was "limited in scope," is nonsense. AT&T Comments at 47. The CLECs, not Qwest, selected the metrics, products, and states to be reviewed in data reconciliation. AT&T itself proposed that data reconciliation should begin with a CLEC identifying "the particular performance measurement in question and the evidence that lead the CLEC to conclude that a discrepancy exists," and Liberty agreed to AT&T's proposal. *See* Attachment 5, Appendix D, Liberty Final Report on Data Reconciliation at 4 (April 19, 2002).

AT&T also complains that Liberty reconciled performance data that is now a year old. AT&T Comments at 47. The reconciliation effort began in early September 2001, just after Qwest had released its July 2001 performance data. Thus, the reconciliation was based on the most current data available at the time. The reconciliation process took roughly eight months to complete. If the parties attempted to reconcile more recent data, the process would take months to complete, and AT&T would again complain about stale data. This creates a Catch-22 problem. As a commissioner from Nebraska noted, "Isn't it fair to say that if we kept going to the most recent information, . . . there would be no end to the process, period, ever?" March 11, 2002 Nebraska Transcript at 85.

AT&T's desire for military style testing raises similar problems. AT&T Comments at 47. To achieve that end, after Qwest fixed a problem identified in data reconciliation, the parties would have to wait several months to develop a new data sample to

assess whether the fix worked. Liberty, in turn, would have to conduct another round of reconciliation. If any continuing or new problems were discovered, the parties would have to start the process all over again. This approach would result in a never ending, and unnecessary, cycle of data reconciliation as a prerequisite to Section 271 approval.

Liberty carefully reviewed the remedial measures Qwest implemented before closing the one exception and 13 observation reports issued in data reconciliation. Seven of these reports related to “process or system-type matters.” Liberty verified that Qwest corrected these errors through “computer programming or revised data collection methods.” ^{13/} The other observations arose, at least in part, from slight incidences of human error. As to each of these observations, Liberty reviewed Qwest’s training materials, conducted interviews of Qwest employees, and used its own professional judgment in finding that Qwest’s corrective actions would resolve any problems. ^{14/} “[N]one of the human-error issues . . . caused Liberty to believe that Qwest’s current performance reporting could not be relied upon as a measure of Qwest’s actual performance.” *Id.* at 9. Liberty also concluded that Qwest “has reasonable processes in place to self-check its performance reporting and to correct problems found.” *Id.*

AT&T also asserts that Liberty improperly “placed the burden [of proof] on the CLECs to prove that Qwest’s data were inaccurate.” AT&T Comments at 47. Liberty’s final report dealt with this allegation head-on, and Liberty concluded that any arguments related to an

^{13/} Liberty Final Report on Data Reconciliation at 8. *See also id.* at 10-11 (Exception 1046 and Observations 1026, 1027), 12 (Observations 1029, 1030), 17 (Observation 1035), 19 (Observation 1038).

^{14/} *Id.* at 8-9. *See also id.* at 11-12 (Observation 1028), 13-16 (Observations 1031-34), 16-19 (Observations 1036-37). The details of these observation reports, and Liberty’s decisions to close them, are addressed in the Reply Declaration of Michael Williams ¶¶ 25-32.

improper study objective should be brushed aside. Liberty Final Report on Data Reconciliation at 3-4.

In sum, Qwest's performance data are "sufficiently reliable for purposes of conducting [a] section 271 analysis." *Georgia/Louisiana 271 Order* ¶ 20.

B. Qwest Accurately Processes Orders Handled Manually

AT&T, WorldCom, and Covad allege that Qwest makes errors on 15% of orders that it processes manually. AT&T Comments at 42; WorldCom Comments at 12; Covad Comments at 40. This argument is based on improper extrapolation from a sample of only 76 disparate sub-sets of orders reviewed by KMPG. Qwest's audited and reconciled performance results show that it can and does timely provision orders requiring manual handling.

In the data reconciliation effort, Liberty analyzed over 10,000 unbundled loop and interconnection trunk orders and unbundled loop repair tickets. Virtually all of these orders had a manual processing component. Liberty issued seven observations that involved slight incidences of human error. These observations showed that Qwest's rate of human error was well below 15%, was within the zone of reasonableness one would expect for humans, and often skewed the results in favor of CLECs. *See Williams Reply Decl.* ¶ 36. More importantly, none of the commenters adduced any evidence that these human errors actually caused harm to CLECs by delaying an order or otherwise making it difficult for CLECs to process orders. 15/

15/ See Covad Comments at 40-41; AT&T Comments at 41-42; WorldCom Comments at 10-11. AT&T asserts that manual processing "by nature, increases the likelihood of delays and errors in provisioning," but does not show any examples of discriminatory delays caused by human errors. AT&T Comments at 41.

C. Qwest's Commercial Performance Meets the Standards Established by the PIDs

At this point, the record includes six months of relevant commercial performance data, from January through June 2002, for each of the application states. ^{16/} The results over that period unequivocally show that Qwest is providing interconnection and access to network elements on a nondiscriminatory basis.

Although commenters raised concerns about isolated instances in which Qwest failed to achieve the performance standard under a few metrics for a few products, they ignored the standard of review applied to commercial performance. For example, Covad focused on line sharing repairs, which account for a tiny fraction of CLEC unbundled loop activity, but completely ignored Qwest's overall loop performance. Covad Comments at 31-34. The Commission has repeatedly held that, for each checklist item, it reviews "the performance demonstrated by all the measurements as a whole. Accordingly, a disparity in performance for one measure, by itself, may not provide a basis for finding noncompliance with the checklist." *New Jersey 271 Order*, App. C ¶ 9. When viewed under that standard, Qwest's performance results are more than satisfactory.

Item 1 - Interconnection. None of the commenters raised any specific concerns about Qwest's commercial performance with regard to interconnection or collocation. This is hardly surprising. For example, for interconnection, Qwest met every performance standard in Colorado and North Dakota during the entire six-month period. Williams Reply Decl. ¶ 40. In Nebraska, Qwest failed to achieve parity under metric MR-6, the mean repair interval, in April,

^{16/} Qwest included the results for January through April in Attachment 5, Appendix D to its Application. Qwest submitted the results for May and June in ex partes filed on July 2 and 23, respectively. Performance in each month is relevant because it occurred before comments were due on July 3, 2002. See, e.g., *Maine 271 Order* ¶ 8 n.19.

but there were only two CLEC repairs in that month. Qwest met every other performance standard in Nebraska in every other month. *Id.* The only performance standards that Qwest missed more than once in any state were MR-6 in Idaho, where Qwest achieved parity in the last three months, and MR-8 in Iowa and Idaho, where the 6-month average CLEC trouble rates were only 0.03%. *Id.* Call blockage on interconnection trunks was virtually nonexistent in every state. *Id.*

For collocation, Qwest's track record is perfect. Whenever it had data to report, Qwest met the performance standards for collocation forecasts and installations in every month in each state. *Id.*

Item 2 - OSS. Qwest's performance with regard to gateway availability, pre-order response times, LSR rejection notice intervals, timely firm order confirmations, work completion notifications, LSR accountability, timely release notifications, and stand-alone test environment accuracy has been impeccable. With one minor exception, Qwest did not miss any performance standard more than once in the last six months, in any state, for these services. 17/

Commenters ignored that performance and focused instead on reject rates, flow-through, jeopardy notices, and billing. *See, e.g.,* AT&T Comments at 40-46; WorldCom Comments at 12-15, 17-19. With regard to rejection notices under diagnostic metric PO-4, AT&T asserts that Qwest's systems reject nearly one-third of all orders submitted electronically, but ignores that many orders are properly rejected due to CLEC errors. AT&T Comments at 41. Several CLECs have reject rates in the 7-17% range for orders that were auto-rejected, which

17/ *Id.* at 42. The lone exception was PO-6B, work completion notification timeliness. Qwest missed the six hour benchmark for that metric three times in Iowa and North Dakota, but met the benchmark in the last three months (April-June) in each state. Moreover, the 6-month CLEC average was well below the benchmark in North Dakota, and only three minutes above the benchmark in Iowa.

demonstrates that Qwest's systems are capable of processing correct orders. 18/ AT&T makes no attempt to quantify the alleged adverse effect of improper rejection notices, and relies instead on an assertion that rejections delay provisioning and increase CLEC costs. AT&T Comments at 41 and Finnegan Decl. at ¶ 134. Bald assertions do not rebut Qwest's prima facie showing of compliance with Section 271. Moreover, Qwest met the 18-second benchmark for issuing auto-rejects in every state in each of the last six months, with average intervals of less than 10 minutes. Williams Reply Decl. ¶ 44. Because Qwest notifies CLECs of errors almost immediately, it is highly unlikely that rejection notices significantly delay provisioning for properly submitted orders.

Commenters also complained about Qwest's flow-through rates under diagnostic metric PO-2A. AT&T Comments at 41; WorldCom Comments at 11. The commenters ignored that, in prior Section 271 orders, the Commission has placed little weight on flow-through, particularly when, as in this case, the BOC "demonstrates that it provides timely order confirmation and reject notices." *Georgia/Louisiana 271 Order* ¶ 143. The commenters also ignored that the Commission has consistently acknowledged that CLECs affect flow-through rates, and has looked at individual CLEC results to determine whether a BOC's systems are capable of flowing through orders. *Id.* at ¶ 145. In the application states, individual CLECs have achieved overall flow-through rates in the range of 70-90%. 19/

18/ See July 17, 2002 Qwest confidential ex parte, which shows results for individual CLECs under metrics PO-4A (GUI interface) and PO-4B (EDI interface) from January through April.

19/ See July 17, 2002, Qwest confidential ex parte showing results for individual CLECs under metrics PO-2A-1 (GUI interface) and PO-2A-2 (EDI interface) from January through April. See also July 29, 2002, Qwest ex parte showing results for individual CLECs under PO-2A in June.